

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE COMPLAINT	§	
OF MS “ORION J”	§	
SCHIFFFAHRTSGESELLSCHAFT UG	§	
(HAFTUNGSBESCHRÄNKT) & CO. KG,	§	C.A. NO. 4:14-cv-1411
JMS FOURTY-FIFTH SHIPPING CO. LTD,	§	
AND JÜNGERHANS HEAVY-LIFT-FLEET	§	
SERVICES GMBH & CO. KG, AS OWNER,	§	
OWNER <i>PRO HAC VICE</i> AND MANAGING	§	
OWNER, RESPECTIVELY, OF THE M/V	§	
INDUSTRIAL DAWN, FOR EXONERATION	§	
FROM OR LIMITATION OF LIABILITY	§	(ADMIRALTY)

MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd, and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG (hereinafter collectively referred to as the “Limitation Petitioners”), and file their Motion for Leave to File Third-Party Complaint, respectfully showing the Court the following:

I.

1. The Limitation Petitioners seek leave to file their Third-Party Complaint pursuant to Federal Rule of Civil Procedure 14(c) against Intermarine, LLC; Industrial Maritime Carriers LLC; Industrial Maritime Carriers (Bermuda), Ltd.; and, TTS NMF GmbH (hereinafter referred to collectively as the “Third Party Defendants”), whose negligence proximately caused, in whole or in part, the incident underlying Claimants/Plaintiffs Eusebia Garcia, individually, as representative of the estate of Gabriel Garcia, deceased, and as next friend of Eduardo Garcia, a

minor; Angel Garcia; Marleny Martinez; Esmeralda Garcia; and, Mirian Garcia's damage claims (hereinafter, the foregoing will be referred to collectively as the "Garcia and Martinez Plaintiffs."). However, the Garcia and Martinez Plaintiffs have not asserted any claims against the Third Party Defendants in this action.

2. Likewise, Intermarine, LLC; Industrial Maritime Carriers LLC; and, Industrial Maritime Carriers (Bermuda), Ltd. (hereinafter collectively referred to as the "IMC" Claimants) have asserted damages allegedly caused by the negligence of the Limitation Petitioners. The Limitation Petitioners would show that the alleged damages of the IMC Claimants, if any, were proximately caused, in whole or in part, by the negligence of TTS NMF GmbH. However, the IMC Claimants have not asserted any claims against TTS NMF GmbH in this limitation action.

II.

3. The Court should allow the Limitation Petitioners to file their Third-Party Complaint, attached hereto as Exhibit 1, for the following reasons:

- a. The IMC Claimants and/or TTS NMF GmbH are liable for all or part of the Garcia and Martinez Plaintiffs' claims against the Limitation Petitioners.
- b. TTS NMF GmbH is liable for all or part of The IMC Claimants' claims against the Limitation Petitioners.
- c. This matter is still in its early stages of discovery such that joinder of these claims should not cause delay or inconvenience to the parties.
- d. Leave to amend should be freely given when justice so requires. Fed. R. Civ. P. 15(a).
- e. The Limitation Petitioners seek the relief requested herein not for purposes of delay, but so that justice may be done.

III.

WHEREFORE, PREMISES CONSIDERED, MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG, JMS Fourty-Fifth Shipping Co. Ltd, and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG respectfully request that the Court grant their Motion for Leave to File Third Party Complaint and for such further relief to which they may be justly entitled.

Respectfully submitted,

EASTHAM,WATSON, DALE AND FORNEY, L.L.P.

/s/ Robert L. Klawetter

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MS “ORION J” Schiffahrtsgesellschaft
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JMS Fourty-Fifth Shipping Co. Ltd,
and Jüngerhans Heavy-Lift-Fleet Services
GmbH & Co. KG

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for each of the claimants regarding the relief requested herein and that counsel for all claimants except (1) Industrial Maritime Carriers LLC; (2) Industrial Maritime Carriers (Bermuda), Ltd; and (3) Intermarine, LLC confirmed they are unopposed to the motion. Counsel for (1) Industrial Maritime Carriers LLC; (2) Industrial Maritime Carriers (Bermuda), Ltd.; and, (3) Intermarine, LLC was unable to confirm that his clients are unopposed at the time of filing; accordingly, I must list them as opposed.

/s/ Robert L. Klawetter

Robert L. Klawetter

CERTIFICATE OF SERVICE

I certify that I filed the foregoing pleading on **October 3rd, 2014**, electronically, and that a true and correct copy of the foregoing will be served on counsel of record via the Electronic Case Filing System of the United States District Court for the Southern District of Texas, Houston Division, and/or telefax, certified mail, return receipt requested, as enumerated below.

/s/ Robert L. Klawetter

Robert L. Klawetter

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